



ENVIRONMENTAL PROTECTION AGENCY

[EPA-R05-SFUND-2022-0261; FRL-9619-01-R5]

Proposed CERCLA Administrative Prospective Purchaser Agreement and Proposed CERCLA Administrative Settlement Agreement [EPA Agreement Nos. V-W-22-C-004 and V-W-22-C-003]; Proposed Explanation of Significant Differences; U.S. Smelter and Lead Refinery, Inc. Site, East Chicago, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlements; notice of explanation of significant differences; request for comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the terms of the proposed settlement agreements, the Environmental Protection Agency (EPA), Region 5, hereby gives notice of two proposed administrative settlements concerning the U.S. Smelter and Lead Refinery, Inc., Site in East Chicago, Indiana (the “Site”): (1) a proposed administrative Prospective Purchaser Agreement (the “PPA”); and (2) a proposed Administrative Settlement Agreement and Order on Consent (the “ASAOC”). The EPA proposes to enter into the PPA with Industrial Development Advantage of East Chicago, LLC as purchaser (“Purchaser”). The PPA requires Purchaser to perform remedial action on a portion of the Site. The EPA proposes to enter into the ASAOC with Atlantic Richfield Company, The Chemours Company FC, LLC, E.I. du Pont de Nemours and Company, U.S. Smelter and Lead Refinery, Inc., and United States Metals Refining Company as respondents (“Respondents”) and with Arava Natural Resources Company, Inc., Mining Remedial Recovery Company, and Mueller Industries, Inc., as additional covered parties (“Additional Covered Parties”). The ASAOC requires the Respondents to pay \$18,000,000 in past response costs and provide financial assurance for the remedial action to be performed by Purchaser under the PPA. The State of Indiana joins the EPA as a party to both agreements. The EPA is also providing notice of a proposed Explanation of Significant Differences

(ESD) for the portion of the Site that is the subject of the PPA. The EPA plans to finalize the proposed ESD after the two factual prerequisites for the selected contingent remedy provided in the Record of Decision Amendment dated March 24, 2020 have been met. For thirty (30) days following the date of publication of this notice, the EPA will receive written comments on the settlements and the proposed ESD. The EPA will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations that indicate that the proposed settlements and the proposed ESD are inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at <https://www.epa.gov/uss-lead-superfund-site>.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R05-SFUND-2022-0261, by either of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, ATTN: Charles Rodriguez, External Communications Office (RE-19J), 77 W. Jackson Blvd., Chicago, Illinois 60604.

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Steven P. Kaiser, Office of Regional Counsel, Environmental Protection Agency, telephone number: (312) 353-3804; email address: kaiser.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Where Can I View the Proposed Settlement Agreements and ESD?

The proposed settlement agreements and proposed ESD are available electronically as part of Docket ID No. EPA-R05-SFUND-2022-0261, at <https://www.regulations.gov>, under “Supporting and Related Material.” The proposed settlement agreements and proposed ESD can also be viewed at <https://www.epa.gov/uss-lead-superfund-site>. The proposed settlement agreements, proposed ESD, and related Site documents can be viewed in hardcopy at the East Chicago Public Library, 2401 E. Columbus Drive, East Chicago, IN 46312, (219) 397-2453; and the Robert A. Pastrick Library, 1008 W. Chicago Ave., East Chicago, IN 46312, (219) 397-5505.

B. What Should I Know Before I Submit Comments?

By this notice, the EPA is requesting comment on (1) the terms of the proposed PPA; (2) the terms of the proposed ASAO; and (3) the proposed ESD. The EPA has previously accepted public comments on the proposed plan subsequently adopted in the Record of Decision Amendment dated March 24, 2020. The EPA’s response to comments on the proposed plan is available at <https://semspub.epa.gov/work/05/955458.pdf>.

Submit your comments, identified by Docket ID No. EPA-R05-SFUND-2022-0261, at <https://www.regulations.gov> (our preferred method), or the other method identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of

the primary submission (i.e. on the web, cloud, or other file sharing system). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Background Information

This notice pertains to the U.S. Smelter and Lead Refinery, Inc. Superfund Site in East Chicago, Indiana. The Site is divided into two Operable Units, and Operable Unit 1 is further divided into three Zones. The portion of the Site affected by the proposed action is the area encompassed by the former West Calumet Housing Complex, Goodman Park, and a utility corridor located between Zone 1 and Zone 2 in Operable Unit 1 of the Site. This area is identified in the proposed agreements and proposed ESD as “Modified Zone 1.”

The PPA and ASAOC provide for remediation of contaminated soils in Modified Zone 1 to commercial/industrial standards. A commercial/industrial remedy is consistent with the contingent remedy described in the Record of Decision Amendment dated March 24, 2020 (the “ROD Amendment”). The ROD Amendment states that, if two conditions are satisfied, the EPA will issue an ESD to confirm that these two conditions have been met and will change the selected remedy for Modified Zone 1 from a residential cleanup to a commercial/industrial cleanup. On May 26, 2020, the first condition was satisfied when the City of East Chicago changed the zoning designation for Modified Zone 1 from residential to light industrial. The Purchaser intends to acquire title to real property within Modified Zone 1 (the “Property”) with the intent to redevelop it for commercial/industrial use. This acquisition will satisfy the second condition. Once the EPA receives notice that the Purchaser has acquired title to the Property, both conditions will be satisfied. The EPA will then issue the ESD and the PPA will become effective. Under the proposed PPA, Purchaser will remediate contaminated soils at the Property to commercial/industrial criteria as required by the ROD Amendment.

Under the proposed ASAOC, Respondents will provide financial assurance for the remedial action to be

performed by Purchaser under the PPA, pay future federal and state oversight costs after application of an \$800,000 credit towards those costs, and pay \$18,000,000 in settlement of certain response costs incurred by the EPA at the Site. The Respondents and the Additional Covered Parties also agree to waive potential claims for reimbursement from the Hazardous Substance Superfund under Section 106(b) of CERCLA, 42 U.S.C. 9606(b).

In both the PPA and the ASAO, the EPA covenants not to sue the Purchaser, Respondents, and Additional Covered Parties pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to Operable Unit 1. The EPA's covenants not to sue are subject to reservations. The settlement agreements also provide the Purchaser, Respondents, and Additional Covered Parties with protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

The EPA is providing notice of the proposed ASAO in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), which requires the Administrator to provide notice and an opportunity for comment when the EPA proposes to settle a claim pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h).

The EPA is providing notice of the proposed PPA in accordance with the terms of the PPA. Section 117(c) of CERCLA, 42 U.S.C. 9617(c), and 40 CFR 300.435(c)(2)(i) require EPA to issue an ESD when a settlement differs in any significant respect but does not fundamentally alter the remedy selected in the Record of Decision with respect to scope, performance, or cost. A formal public comment period is not required for an ESD.

Due to the interdependent nature of the three documents included in this notice, the EPA is requesting comment on all three documents simultaneously. The EPA will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations that indicate that the proposed settlements and proposed ESD are inappropriate, improper, or inadequate.

Douglas Ballotti,
Director,

Superfund & Emergency Management Division, Region 5.

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